

MATTHEW J. SHIER (SBN: 72638)
JEREMY W. KATZ (SBN: 119418)
PINNACLE LAW GROUP LLP
425 California Street, Suite 1800
San Francisco, CA 94104
Telephone: (415) 394-5700
Facsimile: (415) 394-5003

Attorneys for Respondent Robert J.
Nichols

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DOYLE D. HEATON and
MARY K. HEATON,
Debtors

No. 10-40297 EDJ

Chapter 11

**EX PARTE APPLICATION TO APPROVE
STIPULATION CLARIFYING AUTOMATIC
STAY DOES NOT APPLY AND
PROVIDING THAT ARBITRATION
PROCEEDING IS BINDING ON ESTATE**

[No Hearing Required]

The *ex parte* application of Robert J. Nichols, joined by the Debtors and the Official Creditors' Committee, with the approval of Wells Fargo, NA, is made with reference to the following facts:

1. This Chapter 11 case was filed on January 11, 2010 (Docket No. 1).
 2. Among the property of the estate is the Debtor's 20% membership interest in Oak Brook Partners II LLC, a limited liability company ("Oak Brook"), which owns an ABBA self storage facility in Concord, California (the "Oak Brook Assets").
 3. On the petition date, litigation was pending between certain members of Oak Brook for dissolution of the company.

1 4. The litigation was commenced as a petition for arbitration to dissolve Oak Brook.
2 Mr. Heaton is one of the claimants in the arbitration proceeding. Prior to the petition date, the
3 Arbitrator ordered that Oak Brook be dissolved, but that Respondent Nichols has an option to
4 purchase the remaining membership interests at a value determined by the Arbitrator in a hearing
5 to be held in the near future.

6 5. In the event the option is not timely exercised, the Oak Brook Assets will be sold
7 in the open market, and any net proceeds derived therefrom will be distributed to the members in
8 accordance with the Operating Agreement of Oak Brook. A brief chronology of the arbitration to
9 date is as follows:

10 a. Arbitration demanding judicial dissolution commenced April 20, 2009 (the
11 "Arbitration").

12 b. William A. Quinby appointed Arbitrator on or about July 1, 2009;

13 c. Hearing: September 1 through 2, 2009;

14 d. Interim Award: November 20, 2009;

15 e. First Addendum to Interim Award (establishing valuation process to
16 determine buy-out price): January 6, 2010; and

17 f. Debtors' bankruptcy case was commenced on January 11, 2010.

18 6. The Debtors and Respondent agree that the conclusion of the Arbitration and
19 valuation process is in the best interests of, and will have no adverse impact on, the estate.
20 Moreover, Mr. Heaton is a claimant in the Arbitration proceeding. The Official Committee of
21 Unsecured Creditors has no opposition to the terms of this Stipulation. A duly executed copy of
22 the Stipulation is attached hereto, marked "Exhibit A" and made a part hereof. It states as
23 follows.

24 7. The automatic stay provided by 11 U.S.C. § 362 does not apply to the Arbitration
25 and the matter may go forward.

26 8. The determination of the Arbitrator therein shall be binding upon the Debtors and
27 their bankruptcy estate, and the Debtors' interests in Oak Brook and/or the Oak Brook Assets

1 may be liquidated consistent with the decision of the Arbitrator and this Court's Order Approving
2 Settlement Agreement with Wells Fargo, N.A. (Docket No. 131), without need for further order
3 of this Court.

4 9. While not a party to the Stipulation, Wells Fargo, N.A. has approved the terms
5 thereof.

6 WHEREFORE, Applicant prays for an order granting this application and approving the
7 Stipulation and for such other and further relief as is proper in the premises.

8 Dated: April 19, 2010

PINNACLE LAW GROUP LLP

9
10 By /s/ Matthew J. Shier
11 Matthew J. Shier, Attorneys for
12 Respondent Robert J. Nichols

1 HANSON BRIDGETT LLP
2 JAMES D. HOLDEN - 42872
2 jholden@hansonbridgett.com
3 425 Market Street, 26th Floor
3 San Francisco, CA 94105
4 Telephone: (415) 777-3200
4 Facsimile: (415) 541-9368

5 Attorneys for Respondent

6

7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 DOYLE D. HEATON and
13 MARY K. HEATON,

14 Debtors.

No. 10-40297 EDJ

Chapter 11

15 STIPULATION CLARIFYING AUTOMATIC
16 STAY DOES NOT APPLY AND
17 PROVIDING THAT ARBITRATION
18 PROCEEDING IS BINDING ON ESTATE

[No Hearing Required]

19 It is stipulated by and among Doyle D. Heaton and Mary K. Heaton, Debtors, and
20 Robert J. Nichols, Respondent in the below-referenced arbitration proceeding, as
21 follows:

- 22 1. This Chapter 11 case was filed on January 11, 2010 (Docket No. 1).
- 23 2. Among the property of the estate is the Debtor's 20% membership interest
in Oak Brook Partners II LLC, a limited liability company ("Oak Brook"), which owns an
ABBA self storage facility in Concord, California (the "Oak Brook Assets").
- 24 3. On the petition date, litigation was pending between certain members of
Oak Brook for dissolution of the company.
- 25 4. The litigation was commenced as a petition for arbitration to dissolve Oak
Brook. Mr. Heaton is one of the claimants in the arbitration proceeding. Prior to the

1 petition date, the Arbitrator ordered that Oak Brook be dissolved, but that Respondent
2 has an option to purchase the remaining membership interests at a value determined by
3 the Arbitrator in a hearing to be held in the near future.

4 5. In the event the option is not timely exercised, the Oak Brook Assets will be
5 sold in the open market, and any net proceeds derived therefrom will be distributed to
6 the members in accordance with the Operating Agreement of Oak Brook. A brief
7 chronology of the arbitration to date is as follows:

- 8 a. Arbitration demanding judicial dissolution commenced April 20, 2009
9 (the "Arbitration").
10 b. William A. Quinby appointed Arbitrator on or about July 1, 2009;
11 c. Hearing: September 1 through 2, 2009;
12 d. Interim Award: November 20, 2009;
13 e. First Addendum to Interim Award (establishing valuation process to
14 determine buy-out price): January 6, 2010; and
15 f. Debtors' bankruptcy case was commenced on January 11, 2010.

16 6. The Debtors and Respondent agree that the conclusion of the Arbitration
17 and valuation process is in the best interests of, and will have no adverse impact on, the
18 estate. Moreover, Mr. Heaton is a claimant in the Arbitration proceeding. The Official
19 Committee of Unsecured Creditors has no opposition to the terms of this Stipulation.

20 **NOW, THEREFORE, IT IS HEREBY STIPULATED AS FOLLOWS:**

21 7. The automatic stay provided by 11 U.S.C. § 362 does not apply to the
22 Arbitration and the matter may go forward.

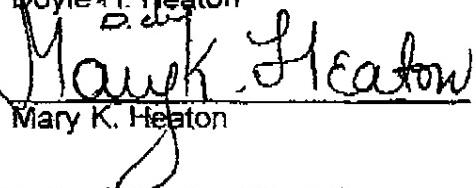
23 8. The determination of the Arbitrator therein shall be binding upon the
24 Debtors and their bankruptcy estate, and the Debtors' interests in Oak Brook and/or the
25 Oak Brook Assets may be liquidated consistent with the decision of the Arbitrator and
26 this Court's Order Approving Settlement Agreement with Wells Fargo, N.A. (Docket No.
27 131), without need for further order of this Court.

28

1 Authorized Signatures

2 
3 Robert J. Nichols

4 
5 Doyle H. Heaton

6 
7 Mary K. Heaton

8 We have no opposition to Court order pursuant to the foregoing Stipulation.

9 Official Committee of Unsecured Creditors

10 By: _____

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Authorized Signatures
2
3

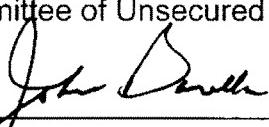
4 Robert J. Nichols

Doyle H. Heaton

6 Mary K. Heaton

7 We have no opposition to Court order pursuant to the foregoing Stipulation.
8

9 Official Committee of Unsecured Creditors

10 By: 

11 Its: Chair

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28